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COURT OF APPEALS  
DIVISION II

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Court of Appeals No. 49056-1-II  
STATE OF WASHINGTON  
BY AP

DEPUTY

IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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IN RE THE ESTATE OF LEEANNA MICKELSON

HEATHER MICKELSON  
Appellant,

v.

JAMES A. MICKELSON  
Respondent.

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BRIEF OF RESPONDENT JAMES A. MICKELSON

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By:

Christi C. Goeller, WSBA No. 33625  
LUCE & ASSOCIATES, P.S.  
Of Attorneys for Respondent James A. Mickelson  
4505 Pacific Highway East, Suite A  
Tacoma, WA 98424  
(253) 922-8724

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## II. TABLE OF AUTHORITIES

### Cases:

*In re Brown's Estate*, 29 Wn.2d 20, 185 P.2d 125 (1947)

*Estate of Burton v. Didricksen*, 189 Wn. App. 630, 358 P.3d 1222 (2015)

*Krawiec v. Red Dot Corp.*, 189 Wn. App. 234, 354 P.3d 854 (2015)

*Wilkes v. O'Bryan*, 98 Wn. App. 411, 989 P.2d 594 (1999)

*In re Wittmen's Estate*, 58 Wn.2d 841, 365 P.2d 17 (1961)

### Statutes:

RCW 26.16.120

### **III. INTRODUCTION**

It is undisputed that Petitioner Heather Mickelson's mother, Leeanna Ruth Mickelson<sup>1</sup> died on May 1, 2012, without a will. What she did have prior to her death was a fully executed and valid Community Property Agreement, which converted any of the decedent's separate property to community property upon her death. The existence of the Community Property Agreement is also undisputed. As there is no separate property in regard to the subject estate, Petitioner Heather Mickelson's appeal and all related court actions are without merit and in fact, frivolous, due to her intentional disregard of the facts known to her.

### **IV. STATEMENT OF THE CASE**

On May 16, 2016, Petitioner Heather Mickelson filed a Petition for Adjudication<sup>2</sup> of Intestacy & Heirship with the Pierce County Superior Court (Cause No. 16-4-00861-8) (CP 1-3) in regard to her mother, Leeanna Ruth Mickelson, who passed away on May 1, 2012, in Pierce County, Washington. CP 4. Petitioner Heather Mickelson was motivated to pursue said action for purposes of obtaining inheritance, particularly a property located in Mexico worth at least \$725,000. CP 8-11.

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<sup>1</sup> Hereinafter "decedent."

<sup>2</sup> Hereinafter "Petition of Adjudication" or "Petition."

On May 16, 2016, Heather Mickelson appeared ex parte before Commissioner Kirkendoll of the Pierce County Superior Court seeking an order granting her Petition for Adjudication and also seeking an injunction against her father, Respondent James Mickelson, to prevent him from disposing of any assets, including the home in Cabo San Lucas, Mexico. RP 2:1-23 (05/16/16); CP 12. Despite Heather Mickelson's assertions in her Brief, Commissioner Kirkendoll denied Heather Mickelson's Petition for Adjudication but did allow her to file a declaration in support of her Petition, after which the Court entered a Show Cause Order setting the matter over for hearing on June 13, 2016. RP 5:13-6:18 (05/16/16). Commissioner Kirkendoll then directed Ms. Mickelson to return to the Clerk's office for instructions regarding how to proceed. CP 12-13.

Petitioner Heather Mickelson returned to the Ex Parte Division the next day, June 17, 2016, appearing again before Commissioner Kirkendoll. RP 2:1-13 (05/17/16). Ms. Mickelson advised the Commissioner that the Clerk's Office had lost the order that Commissioner Kirkendoll had signed yesterday and that "the Clerk accidentally shredded it." RP 2:1-13 (05/17/16). Commissioner Kirkendoll explained to Ms. Mickelson that she was proceeding in the wrong manner and believed she needed letters of intestacy. RP 2:14-21 (05/17/16).

After Heather Mickelson left the courtroom, Commissioner Kirkendoll instructed (presumably) her court clerk to "...please send an email to...clerk's office and let her know that that woman [Heather Mickelson] just came in here and attempted to get orders and did not represent the truth. RP 2:22-3:2 (05/17/16) (emph. added). A little while later, Heather Mickelson returned once again to Commissioner Kirkendoll's courtroom after having visiting the law library and attempted to submit the same documents she had previously tried to submit the day before. RP 3:9-4:22 (05/17/16). At this point, Commissioner Kirkendoll told Heather Mickelson in no uncertain terms, "I am not going to sign anything right now." RP 4:23-24 (05/17/16).

Heather Mickelson returned to the Pierce County Superior Court on approximately June 7, 2016, again in the Ex Parte division. CP 14-15. Appearing before Commissioner Clint P. Johnson, under false pretenses, Heather Mickelson was able to obtain an Order granting her Petition for Adjudication. CP 14-15. The decision was revised and denied accordingly by the Court upon learning that this matter was already in the court system as a contested matter. CP 14-15.

Petitioner Heather Mickelson has persisted in the above-course of action and continues to do so despite having been informed repeatedly that her mother, Leeanna Mickelson, did not have a will but did have a valid

Community Property Agreement. CP 20. For example, on May 9, 2016, attorney Zachery Luce of Luce & Associates advised Heather Mickelson that upon a thorough investigation of our files, he determined Luce & Associates had not drafted a will for Leeanna Mickelson nor did we have a copy of a will drafted by any other firm. CP 20. Additionally, he explained to Heather Mickelson that Luce & Associates had prepared a Community Property Agreement for Leeanna and James Mickelson, which transferred all ownership of property to Heather Mickelson's father, James Mickelson. CP 20.

On June 17, 2016, Heather Mickelson and attorney Anthony Taylor of Luce & Associates appeared before the Pierce County Superior Court and following oral argument, the Court ordered Heather Mickelson's case to be dismissed with prejudice, finding "no legal basis for the Petition [for Adjudication of Intestacy & Heirship] to move forward." CP 28-29. Despite this dismissal with prejudice, Heather Mickelson filed a motion for order to show cause, asking the Pierce County Superior Court to enter an Order to Show Cause why James Mickelson should not be held in contempt for failing to refrain from disposing of property." CP 30-31. A hearing on this issue was held on July 11, 2016, upon which the court ordered "The prior decision of this court stands. The dismissal stands. The motion is denied." CP 33-34.

## V. ARGUMENT

### A. The lower court never signed an order granting Petitioner Heather Mickelson's Petition for Adjudication of Intestacy & Heirship.

Petitioner Heather Mickelson has provided no evidence to support her claim that Commissioner Kirkendoll of the Pierce County Superior Court signed an order granting Ms. Mickelson's Petition for Adjudication on May 16, 2016. Petitioner Heather Mickelson cited to page 5, lines 23-25 in the Report of Proceedings of the ex parte hearing of May 16, 2016 as proof the order was signed. Brief of Appellant at P.2, Sect. B, Para. 1.

These three lines of the transcript, however, must be read in the full context of not only the hearing of May 16, 2016, but also the ex parte hearing held the following day on May 17, 2016. Specifically, at the outset of the May 16, 2016 ex parte hearing, Commissioner Kirkendoll told Heather Mickelson:

I think you are missing a document. You filed the Petition for Adjudication of Intestacy and Heirship. And you handed up an order for my signature. But I don't have any kind of declaration or anything that would tell me that she [Leeanna Mickelson] died without a will. All I have is a petition and order.

RP 3:15-20 (5/16/16).

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Commissioner Kirkendoll went on to ask Heather Mickelson if she had a declaration that would support her Petition for Adjudication. RP 3:24-4:3 (5/16/16). The Commissioner then permitted Heather Mickelson to file an amended declaration but returned the Petition for Adjudication to Ms. Mickelson:

THE COURT: Okay. I'm filing this as an amended declaration. And I need your signature on it, which includes the email from the attorney's office saying there's no will, which is what I need before I can sign what you're asking me to sign. So go ahead and sign right there.

MS. MICKELSON: Thank you.

THE COURT: Okay. So let's give her back her petition here.

MS. MICKELSON: Thank you.

THE COURT: And then let's file the amended declaration with the email from the attorney's office and sign the order. And then you have an Order to Show Cause.

RP: 5:13-25 (5/16/16).

After some additional discussion about Heather Mickelson's desire to stop her father from selling the home in Mexico, Commissioner Kirkendoll advised Heather Mickelson that the hearing date on the Order to Show Cause would be June 13, 2016 at 9:00 AM. RP 6:17-23 (5/16/16). The Commissioner then offered Heather Mickelson some advice before concluding the hearing, stating: "Ma'am, I think you're going to need

more than just your word or what you think Mexican law is in order to convince the Court to do what you're asking to do." RP 7:3-5 (5/16/16). Commissioner Kirkendoll went on to tell Heather Mickelson that "...before you bring that before the Court here, you're going to have to have more than what you just gave me." RP 7:11-13.

Then on May 17, 2016, as set forth above, Heather Mickelson returned to Commissioner Kirkendoll's court room. RP 2:1-13 (05/17/16). At that time, Heather Mickelson attempted to obtain an order granting the Petition for Adjudication, to which Commissioner Kirkendoll responded by refusing to sign anything that day. *Supra*. Furthermore, the Commissioner had her court clerk contact the Clerk's office to let them know Ms. Mickelson had just appeared in her courtroom and attempted to obtain orders under false pretenses. *Supra*.

Later on, in a hearing in Pierce County Superior Court on June 8, 2016, Heather Mickelson actually acknowledged that she did not yet have an order granting her Petition for Adjudication of Intestacy and Heirship, informing the court that she had sought such an order just the day before on June 7, 2016. RP 4:21-25 (6/8/16).

Heather Mickelson has failed to meet her burden of proof to warrant reinstating this supposed order granting her Petition for Adjudication. In fact, all evidence contained in the Clerk's Papers and

Reports of Proceedings support a contrary conclusion. That is, there never was such an order. Heather Mickelson first tried to trick Commissioner Kirkendoll into signing the order on May 17, 2016, outright lying in open court. RP 2:24-3:2 (5/17/16). She then tried to obtain the order by again appearing in the Ex Parte Division on June 7, 2016 before Commissioner Clint Johnson, who denied the order based upon the existence of contested issues. RP 4:21-25.

There is no evidence that the Petition for Adjudication of Intestacy and Heirship was ever granted by any judge or commissioner at the Pierce County Superior Court. As such, res judicata cannot apply to enforce and re-instate an order that never existed. For these reasons alone, Heather Mickelson's appeal should be denied.

Moreover, even had the Petition for Adjudication been granted, a point which Respondent James Mickelson does not concede, for res judicata to apply, there must have been a full and complete hearing on the merits. Such requirements could not have been satisfied in an ex parte hearing, which by definition does not include all interested parties. As such, for these reasons as well, Heather Mickelson's appeal must fail.

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**B. The order of dismissal entered on June 17, 2016 should be upheld.**

1. Heather Mickelson was properly served with notice of the June 17, 2016 hearing.

Due to the contested issues, on June 8, 2016, Commissioner Johnson entered a temporary restraining order preventing the disposal of assets through June 17, 2017, stating that on said date, "...Commissioner Dicke is going to hear the Motion to Dismiss, conduct a full hearing on all those issues, as it relates to the allegations by Mr. [James] Mickelson and [Heather] Mickelson." RP 7:5-7:9 (6/8/16).

Heather Mickelson admits she was personally served in open court on June 8, 2016, with notice of the June 17, 2016 hearing on Respondent James Mickelson's Motion to Dismiss in the Pierce County Superior Court matter. RP 7:19-21 (6/8/16). She acknowledged receipt of said notice in open court and on the record, raising no objections to the manner of service at that time. RP 7:22-23 (6/8/16).

Moreover, during the June 17, 2016 hearing, Heather Mickelson again raised no objection as to improper service or notice during the course of that hearing. RP 4:7-8:6 (6/17/16). Ms. Mickelson also offers no legal authority in support of her argument that all heirs were required to be served with notice of the June 17, 2016 hearing.

Service of process is intended to provide advance notice to an interested party so as to provide an opportunity to appear and respond to a matter. Under the substantial compliance doctrine, a party complies with statutory requirements by satisfaction of the substance essential to the purpose of the statute. *Estate of Burton v. Didricksen*, 189 Wn. App. 630, 637-38, 358 P.3d 1222 (2015); *Krawiec v. Red Dot Corp.*, 189 Wn. App. 234, 241-42, 354 P.3d 854 (2015).

2. The Pierce County Superior Court had jurisdiction to hear Respondent James Mickelson's Motion to Dismiss.

Heather Mickelson also offers no legal authority or evidentiary support for her claim that the Pierce County Superior Court did not have jurisdiction to hear James Mickelson's Motion to Dismiss and again she raised no objection in regard to a lack of jurisdiction during the course of the June 17, 2016 hearing. RP 4:1-8:6 (6/17/16). Her only argument in support of overturning the dismissal is that "It makes no sense to dismiss a probate if there is a decedent." Appellant's Brief at P.5, § C.2.b. This statement is one of opinion only and should be disregarded as such.

Rather the Court of Appeals file in this matter will reflect that at the time of the June 17, 2016 hearing, this Court of Appeals had not yet provided an Acceptance letter in regard to Heather Mickelson's Notice of Appeals, filed on June 13, 2016. This Court of Appeals, however, did

respond with a letter dated June 29, 2016, indicating that the Notice of Appeal filed by Heather Mickelson was premature and expressly stated “...The order of Adjudication of Intestacy and Heirship is not a decision of the trial court appealable as a matter of right.” Therefore, because of this Court of Appeals had yet to accept Heather Mickelson’s appeal, the Pierce County Superior Court, including Commissioner Dicke, retained jurisdiction over the matter and the parties and had full authority to hear and rule upon James Mickelson’s Motion to Dismiss.

While the dismissal entered by Commissioner Dicke makes no sense to Ms. Mickelson, the Commissioner clearly disagreed, explaining that “[T]he Community Property Agreement...controls...so there is no basis for a probate.” RP 4:23-24 (6/17/16). *See* Section D below; *see also* e.g., *In re Brown’s Estate*, 29 Wn.2d 20, 29, 185 P.2d 125, 130 (1947); *In re Wittman’s Estate*, 58 Wn.2d 841, 843, 365 P.2d 17 (1961).

**C. Sanctions are not warranted against Respondent James Mickelson.**

While Heather Mickelson has no qualms alleging the filings submitted by Respondent James Mickelson had no real merit and were designed to distract the lower court, this is nothing more than the pot calling the kettle black. Quite the contrary, it is Ms. Mickelson who has chosen to disregard all facts regarding the existence of the Community

Property Agreement and its legal effect of converting all separate property to that of community property upon an individual's death. Instead, apparently driven by greed and impatience, she has been repeatedly abusing the legal system, filing one frivolous action after another.

With no evidence or legal authority offer to support a claim for sanctions, this aspect of Heather Mickelson's appeal should also be denied.

**D. The Community Property Agreement controls in this case and as such, Petitioner Heather Mickelson's appeal should be denied in its entirety.**

A Community Property Agreement may be entered into at any time by spouses or domestic partners to address their intentions concerning the status or disposition of their property.

Nothing contained in any of the provisions on this chapter or in any law of this state, shall prevent both spouses or both domestic partners from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either.

RCW 26.16.120.

By the terms of a Community Property Agreement, upon the death of spouse, title to all property identified in the Agreement is immediately vested in the surviving spouse and becomes the sole and separate property

of the survivor. E.g., *In re Brown's Estate*, 29 Wn.2d 20, 29, 185 P.2d 125, 130 (1947); *In re Wittman's Estate*, 58 Wn.2d 841, 843, 365 P.2d 17 (1961). It is undisputed that Decedent Leeanna Mickelson executed a Community Property Agreement prior to her death in 2012. Upon her death, any separate property of the Decedent immediately became the sole and separate property of surviving spouse James Mickelson. *In re Wittman's Estate*, 58 Wn.2d at 843.

Again, Washington law is clear on this issue. By the terms of a Community Property Agreement, upon the death of a spouse, all assets of that spouse are immediately transferred and vested in the surviving spouse. *Supra*. Community Property Agreements are enforceable contracts and are not wills. *In re Brown's Estate*, 29 Wn.2d 20, 185 P.2d 125 (1947). Because they are “not wills, [they] are not governed by the laws relating to wills.” *In re Wittman's Estate*, 58 Wn.2d 841, 356 P.2d 17 (1961). Rather the transfer of property pursuant to a Community Property Agreement occurs **outside of – and without the need for – a probate proceeding**. *In re Wittmen's Estate*, 58 Wn.2d at 843 (emph. added). In fact, one of the main reasons for executing Community Property Agreement is to avoid the need for probate. *Wilkes v. O'Bryan*, 98 Wn. App. 411, 415-16, 989 P.2d 594 (1999).



For the foregoing reasons, upon Leeanna Mickelson's death, the Community Property Agreement went into immediate effect, in accordance with the law, and she no longer had any separate or community property attributable to her; it had all been transferred to her surviving spouse James Mickelson the moment she died. Because all of the property became the sole and separate property of James Mickelson, then it follows that there is not– and never was – an estate of Decedent Leeanna Mickelson to administer.

## **VI. CONCLUSION**

In sum, Decedent Leeanna Mickelson and her husband James Mickelson had jointly executed a Community Property Agreement prior to Leeanna Mickelson's death. There was no will. The Community Property Agreement controlled the distribution of Decedent's property and in accordance with the law, all such property became the sole and separate property of James Mickelson. As stated above, Community Property Agreements are not subject to the probate laws. Therefore, Heather Mickelson's appeal fails in regard to any attempt to obtain an order for Adjudication of Intestacy and Heirship.

Furthermore, Appellant Heather Mickelson has failed to meet her burden of proof on every issue raised in her appeal. For this reason alone,

her appeal should be denied in its entirety. The evidence Heather Mickelson has chosen to submit has only managed to establish a pattern of misrepresentations to the Pierce County Superior Court judiciary and others, drawing into question her veracity in the present matter before this Court and demonstrating her abuse of the judicial process.

For all the reasons set forth herein, Respondent James A. Mickelson respectfully requests this Court deny Heather Mickelson's appeal in full and uphold the Pierce County Superior Court's dismissal of her case.

Dated this 22<sup>nd</sup> day of March, 2017.

Respectfully submitted,

**LUCE & ASSOCIATES, P.S.**

*/s/ Christi C. Goeller*

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Christi C. Goeller, WSBA 33625  
Of Attorneys for Respondent James  
A. Mickelson  
4505 Pacific Hwy. E., Ste. A.  
Tacoma, WA 98424  
[Christi.goeller@lucelawfirm.com](mailto:Christi.goeller@lucelawfirm.com)  
253-922-8724

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VI. CERTIFICATE OF SERVICE AND FILING

STATE OF WASHINGTON  
BY AW

The undersigned does hereby declare under the penalty of perjury under the laws of the State of Washington that on March 22, 2016, the undersigned filed the BRIEF OF RESPONDENT JAMES A. MICKELSON via email with:

Washington State Court of Appeals, Division II  
950 Broadway, Suite 300 MS TB 06  
Tacoma, WA 98402  
[COA2Filings@courts.wa.gov](mailto:COA2Filings@courts.wa.gov)

The undersigned further declares that on March 22, 2016, the above-identified pleading was served upon Heather Mickelson via email and regular U.S. mail at:

Heather Mickelson  
801 Dexter Avenue North, #629, Seattle, WA 98109  
E: [hmickelson2003@gmail.com](mailto:hmickelson2003@gmail.com)

and additional copies were served upon the following individuals via email:

Erik Mickelson  
2025 Freeman Road E., Morton, WA 98354  
E: [erik@nwcustomapparel.com](mailto:erik@nwcustomapparel.com)

Scott C. Mickelson  
2804 90<sup>th</sup> Avenue E., Edgewood WA 98371  
E: [skott1976@aol.com](mailto:skott1976@aol.com)

Gale E. McArthur  
c/o Stuart Morgan  
Ledger Square Law, PS  
710 Market St., Tacoma, WA 98402  
E: [stu@ledgersquarelaw.com](mailto:stu@ledgersquarelaw.com)  
E: [amy@ledgersquarelaw.com](mailto:amy@ledgersquarelaw.com)

By: /s/ M. Jo. Lowe  
Printed Name: M. Jo Lowe